

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Mar 02, 2023

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

VALERIE L.,¹

Plaintiff,

v.

KILOLO KIJAKAZI, Acting
Commissioner of Social Security,

Defendant.

No. 1:22-cv-3033-EFS

**ORDER GRANTING PLAINTIFF'S
SUMMARY-JUDGMENT MOTION,
DENYING DEFENDANT'S
SUMMARY-JUDGMENT MOTION,
AND REMANDING FOR FURTHER
PROCEEDINGS**

Plaintiff Valerie L. appeals the denial of benefits by the Administrative Law Judge (ALJ). Because the ALJ failed to address eleven lay-witness statements that are largely consistent with Plaintiff's symptom reports and the treating neurologist's medical opinion, this matter is remanded for further proceedings.

¹ For privacy reasons, Plaintiff is referred to by first name and last initial or as "Plaintiff." See LCivR 5.2(c).

I. Five-Step Disability Determination

A five-step evaluation determines whether a claimant is disabled.² Step one assesses whether the claimant is engaged in substantial gainful activity.³ Step two assesses whether the claimant has a medically severe impairment or combination of impairments that significantly limit the claimant's physical or mental ability to do basic work activities.⁴ Step three compares the claimant's impairment or combination of impairments to several recognized by the Commissioner to be so severe as to preclude substantial gainful activity.⁵ Step four assesses whether an impairment prevents the claimant from performing work she performed in the past by determining the claimant's residual functional capacity (RFC).⁶ Step five assesses whether the claimant can perform other substantial gainful work—work that exists in significant numbers in the national economy—considering the claimant's RFC, age, education, and work experience.⁷

² 20 C.F.R. § 404.1520(a).

³ *Id.* § 404.1520(a)(4)(i), (b).

⁴ *Id.* § 404.1520(a)(4)(ii), (c).

⁵ *Id.* § 404.1520(a)(4)(iii), (d).

⁶ *Id.* § 404.1520(a)(4)(iv).

⁷ *Id.* § 404.1520(a)(4)(v), (g).

1 The claimant has the initial burden of establishing she is entitled to
2 disability benefits under steps one through four.⁸ At step five, the burden shifts to
3 the Commissioner to show the claimant is not entitled to benefits.⁹

4 II. Background

5 Plaintiff filed a Title 2 application alleging disability beginning December 1,
6 2017, alleging severe headaches and low-back pain.¹⁰ After the agency denied her
7 application initially and on reconsideration, Plaintiff requested a hearing before an
8 ALJ.¹¹ ALJ Gregory Moldafsky held a telephonic hearing in January 2021, during
9 which Plaintiff and a vocational expert testified.¹²

10 Plaintiff worked as a nurse until 2016, then took care of her elderly father
11 until he died in March 2017, and then began taking care of her elderly mother,
12 with the assistance of her brother and others.¹³ Plaintiff testified that starting
13 around December 2017, even with medication and limiting “triggering” foods, she
14 suffered from weekly migraine headaches.¹⁴ Plaintiff also testified that low-back

16 ⁸ *Parra v. Astrue*, 481 F.3d 742, 746 (9th Cir. 2007).

17 ⁹ *Id.*

18 ¹⁰ AR 240–41.

19 ¹¹ AR 167–88.

20 ¹² AR 117–47.

21 ¹³ AR 124, 130.

22 ¹⁴ AR 125–27, 133.

1 pain limited her activities and energy and required her to rotate positions every 30
2 minutes.¹⁵

3 After the hearing, the ALJ denied Plaintiff's disability application.¹⁶ As to
4 the sequential disability analysis, the ALJ found:

- 5 • Plaintiff met the insured status requirements through December 31,
6 2017, at which age she was 50.
- 7 • Step one: Plaintiff had not engaged in substantial gainful activity
8 since the alleged onset date of December 1, 2017, through her date
9 last insured.
- 10 • Step two: Plaintiff had the following medically determinable severe
11 impairments: degenerative disc disease (DDD) of the lumbar spine,
12 tension-type headaches, and migraine headaches.
- 13 • Step three: Plaintiff did not have an impairment or combination of
14 impairments that met or medically equaled the severity of one of the
15 listed impairments.
- 16 • RFC: Plaintiff had the RFC to perform light work with the additional
17 limitations:

18 claimant could occasionally climb ramps and stairs; could
19 never climb ladders, ropes, or scaffolds; could occasionally
20 stoop, balance, kneel, crouch, and crawl; could never work at
unprotected heights; was limited to no more than occasional

21 ¹⁵ AR 129–33.

22 ¹⁶ AR 12–28.

1 exposure to extreme cold, extreme heat, fumes, odors, or
2 other pulmonary irritants; and was limited to an
environment with no more than a moderate noise level.

- 3 • Step four: Plaintiff could perform past relevant work as an office
4 nurse.
- 5 • Step five: considering Plaintiff's RFC, age, education, and work
6 history, Plaintiff could perform work that existed in significant
7 numbers in the national economy, such as cashier II, mail clerk, and
8 cafeteria attendant.¹⁷

9 In reaching his decision, the ALJ found the opinion of Plaintiff's treating
10 neurologist, Tony Lee, M.D., not persuasive because it was unsupported by
11 treatment notes and was inconsistent with the record.¹⁸ The ALJ also found the
12 reviewing opinions of Merry Alto, M.D., and Norman Staley, M.D.—that the record
13 contained insufficient evidence on which to evaluate Plaintiff's claim prior to her
14 date last insured—not persuasive because the record was sufficient to assess
15 Plaintiff's RFC.¹⁹

16 The ALJ found Plaintiff's medically determinable impairments could
17 reasonably be expected to cause some of the alleged symptoms, but that her
18 statements concerning the intensity, persistence, and limiting effects of those
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20 ¹⁷ AR 15–24.

21 ¹⁸ AR 22.

22 ¹⁹ AR 21–22.

1 symptoms were inconsistent with the medical evidence and her daily activities.²⁰

2 The ALJ did not mention the lay statements submitted by Plaintiff's brother, aunt,
3 uncle, friends, neighbors, or mother's caregiver.²¹

4 Plaintiff requested review of the ALJ's decision by the Appeals Council,
5 which denied review.²² Plaintiff timely appealed to the Court.

6 **III. Standard of Review**

7 The Court may set aside the Commissioner's decision "only if it is not
8 supported by substantial evidence or is based on legal error."²³ In conducting its
9 limited review, the Court considers the entire record and upholds the ALJ's

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15 ²⁰ AR 21.

16 ²¹ AR 307–18.

17 ²² AR 1–6.

18 ²³ 42 U.S.C. § 405(g); *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012).

19 Substantial evidence is "more than a mere scintilla but less than a preponderance;
20 it is such relevant evidence as a reasonable mind might accept as adequate to
21 support a conclusion." *Hill*, 698 F.3d at 1159 (quoting *Sandgate v. Chater*, 108
22 F.3d 978, 980 (9th Cir. 1997)).

findings “if they are supported by inferences reasonably drawn from the record.”²⁴

Further, the Court may not reverse an ALJ decision due to a harmless error.²⁵

IV. Analysis

A. Lay Witnesses: Plaintiff establishes consequential error.

The ALJ did not discuss the eleven lay statements from Plaintiff’s relatives, friends, and neighbors.²⁶ The Commissioner argues that the ALJ need not have discussed the lay statements because the regulations do not require the ALJ to discuss lay statements. The Court disagrees; the ALJ committed consequential legal error by not discussing the lay statements.

The regulations set forth different requirements for consideration of medical opinions versus nonmedical evidence, such as lay statements. For medical opinions, the ALJ is to consider specific factors and must articulate how he considered two of

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²⁴ *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). *See Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007) (The court “must consider the entire record as a whole, weighing both the evidence that supports and the evidence that detracts from the Commissioner’s conclusion,” not simply the evidence cited by the ALJ or the parties.) (cleaned up).

²⁵ *Molina*, 674 F.3d at 1111, 1115.

²⁶ AR 307–18 (letters in support).

1 these factors—supportability and consistency.²⁷ The other factors include
 2 relationship with the claimant, specialization, and whether the medical source has
 3 familiarity with the other evidence in the claim or an understanding of the social-
 4 security disability policies and evidentiary requirements.²⁸ These other factors
 5 must be considered by the ALJ but the ALJ need not articulate how these factors
 6 were considered unless the ALJ finds that two or more medical opinions about the
 7 same issue—but not in agreement as to the opined limitation(s) for that issue—
 8 were both equally supported and consistent with the record.²⁹

9 In comparison, an ALJ is “not required to articulate how [he] considered
 10 evidence from nonmedical sources using the [medical-opinion] requirements”³⁰
 11 But while the ALJ need not utilize the medical-opinion articulation requirements
 12 when considering evidence from nonmedical sources, the regulations do *not* state
 13 that the ALJ is not required to consider lay statements. Instead, the regulations
 14 specify that—except for some specifically excluded items not encompassing lay
 15 statements about the nature, frequency, or intensity of a claimant’s symptoms—
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17 ²⁷ 20 C.F.R. § 404.1520c(b)(2) (“[W]e will explain how we considered the
 18 supportability and consistency factors for a medical source’s medical opinions or
 19 prior administrative medical findings in your determination or decision.”).

20 ²⁸ *Id.* § 404.1520c(c).

21 ²⁹ *Id.* § 404.1520c(b)(2), (3).

22 ³⁰ *Id.* § 404.1520c(d).
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1 the ALJ “will consider all evidence in [the] case record when [making] a
2 determination or decision” as to disability.³¹

3 This is because “friends and family members in a position to observe a
4 claimant’s symptoms and daily activities are competent to testify as to [a
5 claimant’s] condition.”³² Therefore, “[l]ay testimony as to a claimant’s *symptoms* is
6 competent evidence,” which must be taken into account.³³ Thus, a lay statement
7 about a claimant’s symptoms and how an impairment affects the claimant’s ability
8 to work “*cannot* be disregarded without comment.”³⁴ This requirement is consistent
9 with the directions in the Program Operations Manual System (POMS), which
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11 ³¹ 20 C.F.R. § 404.1520(a)(3). *See also* 20 C.F.R. §§ 404.1520b(c), 404.1513(a)(4).

12 ³² *Dodrill v. Shalala*, 12 F.3d 915, 918-19 (9th Cir. 1993).

13 ³³ *Nguyen v. Chater*, 100 F.3d 1462, 1467 (9th Cir. 1996) (emphasis in original).

14 Competent evidence is evidence tending to prove or disprove a matter in issue.
15 Black’s Law Dictionary (11th ed. 2019).

16 ³⁴ *Nguyen*, 100 F.3d at 1467 (emphasis in original). *See also Brown-Hunter v.*
17 *Colvin*, 806 F.3d 487, 489 (9th Cir. 2015) (requiring the ALJ to explain his
18 interpretation of the evidence to allow the court to meaningfully review the ALJ’s
19 reasoning); *Blakes v. Barnhart*, 331 F.3d 565, 569 (7th Cir. 2003) (“We require the
20 ALJ to build an accurate and logical bridge from the evidence to her conclusions so
21 that we may afford the claimant meaningful review of the SSA’s ultimate
22 findings.”).
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1 directs the ALJ to articulate findings as to lay statements “when evidence from [a]
2 nonmedical source is material to other analyses or conclusions in a claim.”³⁵ Thus,
3 the ALJ must consider lay statements and make findings as to the lay statements
4 about the Plaintiff’s symptoms. Although these findings need not be detailed, the
5 ALJ “must give reasons that are germane to each witness” and supported by
6 substantial evidence to permit meaningful review.³⁶

7 Here, by failing to mention the eleven lay statements, the ALJ erred. The
8 statements are competent evidence that should not have been disregarded without
9 comment. Several of the statements were from individuals who have known
10 Plaintiff for a lengthy period, spanning before the alleged disability onset date of
11 December 1, 2017. The witnesses have observed Plaintiff suffering from migraines
12 for years, that her migraines can last for more than a day, and that she needs to
13 lay down in a dark, quiet room for hours when she has a migraine.³⁷ And several
14 observed Plaintiff with back issues limiting her functioning.

15 While failure to discuss a lay statement may not always result in a
16 consequential error, the ALJ’s failure to discuss how he considered the eleven lay
17 statements is consequential on this record. Whether Plaintiff’s migraines and back
18 conditions became disabling before her date last insured of December 31, 2017, is

20 ³⁵ POMS DI 24503.020D.

21 ³⁶ *Dodrill*, 12 F.3d at 919.

22 ³⁷ *See* AR 307–18.

1 critical.³⁸ These lay statements largely corroborate Plaintiff's migraine and back-
2 pain symptom reports as well as Dr. Lee's medical report opining that Plaintiff
3 would miss 4 or more days of work per month due to migraines and back pain.

4 The ALJ discounted Plaintiff's symptom reports about the migraines during
5 the relevant disability period of December 2017 because:

6 the [medical] record as a whole does not support the claimant's
7 testimony of frequent migraines until July 2019, at which time she
8 reported having 2–3 migraines per week and even sought emergency
9 treatment. Finally, the contemporaneous reports of claimant's daily
10 activities, as described above, which suggest she was providing
around-the-clock home health care for her parents in 2017, are
inconsistent with the claimant's testimony of the frequency and
intensity of her migraine headaches during 2017.

11 Without the ALJ mentioning the eleven lay statements, it is unclear whether he
12 considered the statements by individuals who knew Plaintiff during December
13 2017 when discounting Plaintiff's testimony that she suffered migraines—and back
14 pain—during December 2017. The lay statements indicate that Plaintiff suffered
15 migraines, even with medication and restricting her soy intake, and that she needs
16 to lay down during a migraine.

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18 ³⁸ See Social Security Ruling (SSR) 18-01p: Determining the Established Onset
19 Date in Disability Claims. *See also* *Diedrich v. Berryhill*, 874 F.3d 634, 640 (9th
20 Cir. 2017) (“The fact that lay testimony and third-party function reports may offer
21 a different perspective than medical records alone is precisely why such evidence is
22 valuable at a hearing.”).

1 Because it is unclear whether the ALJ considered the lay statements when
 2 assessing the medical record, Plaintiff's symptom reports, her daily activities, and
 3 Dr. Lee's medical opinion, the Court cannot "confidently conclude that no
 4 reasonable ALJ, when fully crediting the testimony, could have reached a different
 5 disability determination."³⁹ Moreover, the vocational expert testified that if an
 6 individual misses more than one day of work per month that they would not be
 7 employed.⁴⁰ The ALJ's silent discounting of the lay statements constitutes
 8 reversible error.

9 **B. Dr. Lee's Medical Opinion: The ALJ must reevaluate on remand.**

10 Plaintiff argues the ALJ failed to properly assess treating neurologist
 11 Dr. Lee's medical opinion. Dr. Lee began treating Plaintiff for her migraines in
 12 March 2017, seeing Plaintiff about every 3–8 months.⁴¹ In October 2020, Dr. Lee
 13 completed a medical opinion on which he stated that, since the alleged onset date
 14 of December 1, 2017, Plaintiff suffered from lumbar spondylolistheses, DDD of the
 15 lumbar, migraines, and tension headaches. Dr. Lee opined that Plaintiff must lay
 16 down for a couple of hours in the afternoon and would miss 4 or more days of work
 17 per month.⁴²

19 ³⁹ *Stout v. Comm'r, Soc. Sec. Admin.*, 454 F.3d 1050, 1056 (9th Cir. 2006).

20 ⁴⁰ AR 145–46.

21 ⁴¹ AR 420–45, 451, 574–95, 600–09, 614–17, 622–31, 636–40.

22 ⁴² AR 571–73.

1 The ALJ did not find Dr. Lee's opinion persuasive because 1) the treatment
2 notes did not support the exertional limitations or the need to lay down or miss
3 work due to back pain in 2017, 2) there was no motor-strength or gait deficit
4 mentioned in his examination notes in 2017 and early 2018, 3) the treatment notes
5 did not reflect contemporaneous reports by Plaintiff of frequent headaches or
6 migraines, and 4) the record did not show exacerbation of back pain, corresponding
7 physical deficits, or complaints of frequent migraines until well past December
8 2017.⁴³

9 Plaintiff argues the ALJ erred by failing to give clear and convincing reasons
10 for discounting Dr. Lee's uncontradicted treating opinion. The Commissioner
11 argues that, based on the 2017 regulations, the ALJ need not have given clear and
12 convincing reasons but instead must simply explain whether the medical opinion
13 was supported by and consistent with the record, which the ALJ did.

14 The ALJ's analysis is governed by the 2017 regulations. Therefore, the ALJ
15 was required to consider and evaluate the persuasiveness of Dr. Lee's
16 uncontradicted medical opinion and support such findings with substantial
17 evidence and meaningful articulation, but the ALJ did not need to provide clear
18 and convincing reasons for discounting Dr. Lee's opinion as Plaintiff suggests.⁴⁴

20 ⁴³ AR 22.

21 ⁴⁴ 20 C.F.R. § 404.1520c(a), (b). *Woods v. Kijakazi*, 32 F.4th 785, 792 (9th Cir.
22 2022).

1 Because this matter is being remanded for failure to discuss the lay
 2 statements, the ALJ is to reassess the persuasiveness of Dr. Lee’s opinion on
 3 remand. When reevaluating Dr. Lee’s opinion, the ALJ is to consider, minimally,
 4 the supportability and consistency of the opinion and Dr. Lee’s relationship with
 5 Plaintiff and his specialization.⁴⁵ Supportability and consistency are the most
 6 important factors, and the ALJ is required to explain how both factors are
 7 considered.⁴⁶ And the ALJ’s findings must be supported by such *relevant* evidence
 8 as a reasonable mind might accept as adequate to support a conclusion.⁴⁷

9 It is not relevant to discount Dr. Lee’s opinion for a reason that is not
 10 responsive to his opinion about Plaintiff’s back pain and migraines.⁴⁸ In addition,
 11 the ALJ’s consideration of Dr. Lee’s opinion should not be unduly influenced by the
 12 fact that Dr. Lee’s treatment notes did not evidence a diagnosis of low-back pain,
 13 spondylolisthesis, or degenerative disc disease until March 2019. This is because
 14 “medical evaluations made after the expiration of a claimant’s insured status are
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18 ⁴⁵ 20 C.F.R. § 404.1520c(c)(1)–(5).

19 ⁴⁶ *Id.* § 404.1520c(b)(2).

20 ⁴⁷ *Ford v. Saul*, 950 F.3d 1141, 1153–54 (9th Cir. 2020); *Gutierrez v. Comm’r of Soc.*
 21 *Sec.*, 740 F.3d 519, 523 (9th Cir. 2014).

22 ⁴⁸ *See Orn v. Astrue*, 495 F.3d 625, 635 (9th Cir. 2007).

1 relevant to an evaluation of the pre-expiration condition.”⁴⁹ Before Dr. Lee issued
2 his opinion in 2020, he reviewed the 2018 lumbar-spine MRI and was thus aware of
3 lumbar conditions that corroborated Plaintiff’s reports of back pain. Moreover, the
4 2018 MRI findings—and 2018 x-ray findings—were consistent with the October
5 2017 x-ray findings, which predated the December 1, 2017 alleged onset date.⁵⁰
6 The October 2017 x-ray revealed marked convex lumbar curve, moderate
7 degenerative joint disease at L3–4 and L4–5, grade 1 L4 spondylolisthesis, and L5
8 retrolisthesis on S1. The October 2018 x-ray showed multilevel lumbar spondylosis
9 and facet arthrosis with dynamic instability evidence at L3–4 and L4–5, given the
10 retrolisthesis of L3 on L4 and anterolisthesis of L4 on L5, and prominent
11 hypertrophic changes involving the facet joints of the lower lumbar spine,
12 especially at the L4–L5 and L5–S1 levels.⁵¹ And the 2018 MRI revealed:

15 ⁴⁹ *Lester v. Chater*, 81 F.3d 821, 832 (9th Cir. 1996) (quoting *Smith v. Bowen*, 849
16 F.2d 1222, 1225 (9th Cir.1988)), *superseded on other grounds by regulation*, 20
17 C.F.R. pts. 404 & 416.

18 ⁵⁰ AR 436–39. Moreover, Plaintiff was receiving regular chiropractic treatment for
19 lumbar conditions before December 2017 during which she often reported back
20 pain, and then she resumed treatment for her lumbar conditions after changing
21 insurance in 2018. AR 403–16, 518–23, 729.

22 ⁵¹ AR 416, 541.

- 1 • L5/S1 moderate spondylosis with right posterior facet 7 mm synovial
- 2 cyst.
- 3 • L4/L5 moderately severe spondylosis with left far lateral foraminal
- 4 disc fragment and moderately severe bilateral facet arthrosis that
- 5 results in anterolisthesis of L4 and L5. Moderate bilateral osteophytic
- 6 foraminal narrowing.
- 7 • L3/L4 moderately severe spondylosis with small central disc
- 8 herniation and central canal stenosis. Mild bilateral osteophytic
- 9 foraminal narrowing.⁵²

10 Given that Dr. Lee was aware of the imaging results reflecting the lumbar
11 conditions and he had treated Plaintiff since before the alleged onset date, the ALJ
12 is to reconsider on remand whether the record supports an onset of disability
13 before the date last insured of December 31, 2017.⁵³ In addition, on remand, to
14 ensure that the ALJ's consideration of Dr. Lee's opinion is supported by such
15 relevant evidence as a reasonable mind might accept as adequate to support a

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17 ⁵² AR 414–15.

18 ⁵³ See SSR 18-01p (recognizing that “[t]he date we find that the claimant first met
19 the statutory definition of disability may predate the claimant's earliest recorded
20 medical examination or the date of the claimant's earliest medical records, but we
21 will not consider whether the claimant first met the statutory definition of
22 disability on a date that is beyond the period under consideration).

1 conclusion, the ALJ must consider both the waxing and waning evidence
2 pertaining to Plaintiff's headaches.⁵⁴

3 **C. Symptom Reports: The ALJ must reevaluate on remand.**

4 Because the ALJ's failure to consider the lay statements requires remand,
5 the Court need not address each of Plaintiff's arguments that the ALJ erred when
6 assessing her symptom reports. Nonetheless, on remand, the ALJ may not discount
7 Plaintiff's symptom reports merely because she returned to see the neurologist in
8 8 months rather than the recommended 6 months. Without additional evidence
9 inferring that this 2-month discrepancy was consistent with a pattern of Plaintiff
10 failing to seek treatment, this 2-month discrepancy does not serve as substantial
11 evidence to discount Plaintiff's headache reports, as there is no indication that the
12 2-month delay impacted Dr. Lee's course of treatment or Plaintiff's symptoms. The
13 ALJ must also consider that Plaintiff's course of treatment may have been
14 impacted by her change in insurance/providers and ability to afford treatment.⁵⁵

17 ⁵⁴ See, e.g., AR 523 (reporting a mild headache on December 14 and 20, 2017, and a
18 migraine on December 22, 2017); AR 522–23 (reporting at least 2 headaches in July
19 2017, a migraine and mild headache in August 2017, a 2-day headache in October
20 2017, and a headache in November 2017).

21 ⁵⁵ AR 729. See *Gamble v. Chater*, 68 F.3d 319, 321 (9th Cir. 1995); SSR 18-3p:
22 Failure to Follow Prescribed Treatment.

1 In addition, the ALJ must more meaningfully explain how the identification
2 of a soy allergy minimized the number of headaches that Plaintiff suffers, as
3 several medical records continued to reflect headaches notwithstanding diet
4 modification.⁵⁶ Finally, when assessing whether Plaintiff's symptom reports are
5 inconsistent with her daily activities, the ALJ must consider that Plaintiff had help
6 from her brother, neighbors, and in-home help when caring for her mother, and
7 whether such assistance, the setting, and/or other factors allowed for greater
8 flexibility than would be found in the workplace.

9 **D. Remand for further proceedings.**

10 Plaintiff seeks a remand for payment of benefits. However, further
11 proceedings are necessary because disability during the at-issue period of
12 December 2017 is not clearly established.⁵⁷

13 On remand, if the ALJ needs clarification from lay witnesses as to the
14 frequency and intensity of Plaintiff's headaches during—or near—the at-issue
15 period, the ALJ is to develop the record in that regard. Additionally, the ALJ
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17 ⁵⁶ See, e.g., AR 574 (reporting 2–3 migraines a week); AR 591 (reporting migraines
18 every 4 days); AR 627 (reporting 4 migraines a week); AR 578 (reporting 6
19 migraines the prior month); AR 614 (reporting 3 headaches the prior month and
20 one the day before); AR 622 (reporting 1 headache a week).

21 ⁵⁷ See *Leon v. Berryhill*, 800 F.3d 1041, 1045 (9th Cir. 2017); *Garrison v. Colvin*,
22 759 F.3d 995, 1020 (9th Cir. 2014).
23

1 should consider asking Dr. Lee to clarify why he opined that the limitations were
2 present since December 2017.

3 **V. Conclusion**

4 Plaintiff establishes the ALJ erred. The ALJ is to reevaluate—with
5 meaningful articulation and evidentiary support—the sequential process.

6 Accordingly, **IT IS HEREBY ORDERED:**

- 7 1. Plaintiff's Motion for Summary Judgment, **ECF No. 9**, is **GRANTED**.
8 2. The Commissioner's Motion for Summary Judgment, **ECF No. 10**, is
9 **DENIED**.
10 3. The Clerk's Office shall enter **JUDGMENT** in favor of **Plaintiff**.
11 4. This matter is **REVERSED and REMANDED to the**
12 **Commissioner of Social Security for further proceedings**
13 **pursuant to sentence four of 42 U.S.C. § 405(g).**
14 5. The case shall be **CLOSED**.

15 **IT IS SO ORDERED.** The Clerk's Office is directed to file this order and
16 provide copies to all counsel.

17 DATED this 2nd day of March 2023.

18 

19 _____
20 EDWARD F. SHEA
21 Senior United States District Judge
22
23